

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2978 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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HIRALAL C VYAS

Versus

RATILAL H VYAS

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Appearance:

MR PJ VYAS for Petitioner

NOTICE SERVED for Respondent No. 1

Ms. B.R. Gajjar, GOVT PLEADER for Respondent No. 3, 4

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 01/05/2000

ORAL JUDGEMENT

Heard Mr. P.J. Vyas, learned counsel for the  
petitioner and Ms. B.R. Gajjar, learned AGP for  
respondent State.

2. The petitioner made an application under Rule 43-B of the Land Revenue Rules 1972 for grant of a small piece of land admeasuring 5 ft. x 35 ft. adjoining to his house. The Taluka Development Officer rejected the application by order dated 15-2-1985. The petitioner thereafter filed an appeal before the Dy. Collector, who by his order dated 19-4-1985 set aside the order of the Taluka Development Officer passed on 15-2-1985, and remanded the case back to the Taluka Development Officer with a direction to inquire whether the land sought by the petitioner is a small strip of land, and whether such allotment will interfere with the public road. Thereafter the petitioner was asked to pay a sum of Rs.140/- as being the price for occupancy of the land which the petitioner has paid. On such payment the Dy. District Development Officer granted the land to the petitioner by an order dated 30-3-1988 on certain terms and conditions as mentioned in the order. Having felt aggrieved by the order of Dy. District Development Officer on 30-3-1988, respondent no.1 filed an appeal before the Collector and the Collector by his order dated 28-2-1990 set aside the order of Dy. District Development Officer, and directed him to hold an inquiry and to decide the case in accordance with law. The petitioner having felt aggrieved by the order of the Collector, filed Revision Application before the Government and the Addl. Chief Secretary (Appeals) Revenue Department, Government of Gujarat, by his order dated 18-2-1991 rejected the revision application and also quashed the order of Dy. District Development Officer granting the land to the petitioner. Having felt aggrieved by the order of the Government passed on 18-2-1991, the petitioner has filed the present writ petition for quashing the order of the Government dated 18-2-1991.

3. Mr. Vyas, learned counsel for the petitioner submitted that the petitioner is holding land adjacent to the land which he prayed for allotment. It is also submitted that the petitioner is actually in occupation of the land, that is 5 ft x 35 ft. and therefore this land if not allotted to the petitioner he will have difficulty in constructing his house. Learned counsel has further submitted that on the eastern side of the petitioner's house there is a road and on the southern side also there is a road. It is not disputed by learned counsel for the petitioner that the road which runs to the southern side of the petitioner's land will be narrowed down if this plot of 5 ft. x 35 ft. land is allotted to the petitioner. It appears that the land which runs to the southern side of the petitioner's land

has already been narrowed down, and if the present land is allotted to the petitioner, then the said land will be further narrowed down. The Government has accordingly decided not to allot the land to the petitioner mainly on the ground that if the land is allotted to the petitioner then the road which runs on the southern side of the petitioner's land will be further narrowed down. The Addl. Chief Secretary (Appeals) have passed the order after hearing the parties and he has given sufficient reasons for not allotting the land to the petitioner.

4. I do not find any illegality in the order passed by the Addl. Chief Secretary (Appeals), especially in view of the fact that if by allotment of the land the road is narrowed down, in that event I feel that such allotment should not be given. Therefore I do not find any illegality in the order passed by the Addl. Chief Secretary (Appeals) in the Revision Application.

5. Learned counsel for the petitioner further submitted that the Addl. Chief Secretary (Appeals) should have sent back the case to the Dy. District Development Officer for making local inquiry whether the allotment of the land will interfere with the main road. From the submissions of the learned counsel for the petitioner, I have no hesitation to hold that by the allotment of the land, on the southern part of petitioner's land will narrow down the road which runs adjacent to petitioner's land. Any allotment on the southern part of the petitioner's land will have the effect of narrowing down the road and therefore, I do not find any illegality in the order passed by the Government. No interference is therefore called for. Therefore I am of the view that this writ petition has no merits. Accordingly it is dismissed. Rule discharged. I make no order as to costs.

DT: 01-05-2000

( P.K. Sarkar, J )

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